

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Civil Minutes

Date: June 4, 2020

Judge: Hon. James Donato

Time: 50 Minutes

Case No. **C-15-03747-JD**

Case Name **In re Facebook Biometric Information Privacy Litigation**

Attorney(s) for Plaintiff(s): Rafey S. Balabanian

Attorney(s) for Defendant(s): Michael Rhodes

Deputy Clerk: Lisa R. Clark

Court Reporter: Debra Pas

PROCEEDINGS

Motion for Preliminary Approval -- Held (Zoom)

NOTES AND ORDERS

The motion for preliminary approval is denied without prejudice for the reasons stated at the hearing. Dkt. No. 445. The Court's main concerns include in summary:

- The unduly steep discount on statutory damages under the BIPA, and the failure to account for the BIPA's enhanced damages of \$5,000 for intentional or reckless violations, particularly in light of the FTC consent decree.
- A conduct remedy that does not appear to require Facebook to do anything other than follow existing law and Section VI of the FTC consent decree.
- A post-certification change of the class definition to exclude users under the age of 18 and impose a September 2019 cutoff date.
- The scope of release for claims beyond the BIPA and for Facebook's sister and affiliated companies.
- An opt-out period of less than 60 days.
- Proposed notices to the class that are unclear and overly legalistic.
- An unduly complicated claim form requirement.
- Insufficient channels of notice outside of Facebook.

The Court requires an additional hearing at which Facebook engineers and/or business-side employees will explain (1) how Facebook's new practices for biometric information and templates will be different from past practices, and (2) how and where the notices of Facebook's

biometric data policies will be made available to users. Facebook will also provide additional information on the predicted home location protocols.

The parties should jointly propose a date for the hearing within the next few weeks. The pretrial conference and trial dates are vacated pending further order.